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Supreme Court of the United States

OCTOBER TERM, 1965

No. 385

ESTATE OF HARRY STOLL LEYMAN, Deceased,
HARRY S. LEYMAN, JR., Executor, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

DANIEL M. GRIBBON
701 Union Trust Building
Washington, D. C. 20005
Attorney for Petitioner

MATTHEW J. ZINN
COVINGTON & BURLING
701 Union Trust Building
Washington, D. C. 20005

WILLIAM R. SEAMAN
SHERMAN E. UNGER
RONALD E. HEINLEN
FROST & JACOBS
2301 Central Trust Tower
Cincinnati, Ohio 45202

Of Counsel

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The petition in this case prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Sixth Circuit which reversed the Tax Court and required that petitioner pay a civil fraud penalty equal to 50 percent of the entire estate tax rather than 50 percent of the deficiency as the Tax Court had held (Pet. 14a; No. 15,653).*

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* The court of appeals affirmed the determination of the Tax Court that the Commissioner had proven fraud on the part of petitioner (Pet. 15a; No. 15,732); review of that judgment is not sought here.

Legislation was introduced in the first session of the 89th Congress to amend retroactively the applicable provisions of the Internal Revenue Code of 1939 in a manner that would make clear that the penalty should be computed as the Tax Court had found in this case rather than in accordance with the determination of the court of appeals. The Solicitor General requested and was granted an extension of time within which to respond to the petition for writ of certiorari until thirty days after Congress had completed its action on the pending legislation but in no event later than April 30, 1966.

Congress has enacted and the President has signed, on March 7, 1966, Public Law 89-359, which appears in the Appendix hereto, page 1a, *infra,* the effect of which is to provide that the penalty payable by petitioner is 50 percent of the additional tax due. In view of this intervening legislation which accords petitioner in substance the relief sought in the petition for writ of certiorari in this case it is submitted that the Court should enter an order (*United States* v. *Munsingwear,* 340 U.S. 36) granting the petition for writ of certiorari, vacating the judgment of the United States Court of Appeals for the Sixth Circuit, and remanding the case to that court with instructions to remand to the Tax Court for computation and imposition of the civil fraud penalty in accordance with the provisions of Public Law 89-359.

We are authorized to state that the Solicitor General has no objection to the entry of an order as set forth in the immediately preceding paragraph and does not desire to make any response to this Supplemental Memorandum.

DANIEL M. GRIBBON
701 Union Trust Building
Washington, D. C. 20005
Attorney for Petitioner

MATTHEW J. ZINN
COVINGTON & BURLING
701 Union Trust Building
Washington, D. C. 20005

WILLIAM R. SEAMAN
SHERMAN E. UNGER
RONALD E. HEINLEN
FROST & JACOBS
2301 Central Trust Tower
Cincinnati, Ohio 45202

Of Counsel

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APPENDIX

Public Law 89-359
89th Congress, H. R. 10185
March 7, 1966

An Act

Amending certain estate tax provisions of the Internal Revenue Code of 1939.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the last sentence of section 894(a) of the Internal Revenue Code of 1939 (relating to the penalty in the case of a false or fraudulent estate tax return) is amended to read as follows: "If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612(d)(2)." IRC 1939, amendment. 53 Stat. 136. 53 Stat. 437.

(b) Section 871(i) of such code (relating to method of assessment) is amended by striking out "section 3612(d)(2)" and inserting in lieu thereof "section 894(a)". 53 Stat. 132. 80 STAT. 28.

(c) The amendments made by this Act shall be applicable with respect to estates of decedents subject to the provisions of chapter 3 of the Internal Revenue Code of 1939. No interest shall be paid or allowed on any refund or credit of any overpayment attributable to such amendments. 80 STAT. 29. 53 Stat. 119.

Approved March 7, 1966.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1222 (Comm. on Ways & Means).
SENATE REPORT No. 956 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 112 (1966):
Feb. 7: Considered and passed House.
Feb. 21: Considered and passed Senate.

END